

# REVISING THE TORTS COURSE

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It is necessary, in order to evaluate the curricula of contemporary American law schools and to recommend changes or improvements therein, to have some feeling for the objectives to be served by law school education. It might be possible to deal with problems of curriculum in vacuo if it were believed that there exists little or no relationship between its content and methodology, on the one hand, and the goals of legal education, on the other, but presumably few legal educators have gone that far (or are that far gone!). Indeed, it would be very difficult for law teachers to preserve their own self-respect if they did not believe that there exists a fairly close correlation between educational input and professional output. Nevertheless, it is still possible to argue, with force, that the formal structure of the curriculum and the internal arrangement of a specific course are not nearly as important as the process of communication and intellectual stimulation that takes place inside the classroom during the moments of confrontation between teacher and students. To this I would demur, arguing that what goes on during this confrontation is often governed in large measure by the foreordained contents of an assigned casebook. Some great teachers may be capable of escaping the conceptual bounds of the casebook but most, I suspect, stick pretty closely to the materials between the covers. Under these circumstances the student can develop great analytical skill, but the range of his vision may be confined to the editor's own view of the scope of his materials, however narrow.

Furthermore, I prefer to believe, with Professor Leflar, that "taught law is tough law."<sup>1</sup> Not only are the ideas, doctrines and even the mistakes to which the student is exposed in law school durable—in the sense that they are likely to stay with him throughout his professional career—but so are the techniques of analysis and, especially, the interests which he develops. In this paper, therefore, I shall operate on the assumption that course content and other curricular considerations can significantly affect the achievement of law school objectives.

Traditional views of the purpose of legal education center most heavily, of course, on the training of lawyer-practitioners—specialists who will spend their professional careers as advocates within domestic judicial and quasi-judicial arenas, or advisers and draftsmen who will base their advice or draftsmanship upon prediction of probable outcomes of possible litigation. Only infrequently is more than lip-service paid to the function of training judges, legislators, community leaders, administrators, and bureaucrats, and then usually by the "first-class" law schools

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1. Leflar, *Taught Law is Tough Law*, 8 WAYNE L. REV. 465 (1962).

(who, it is sometimes suggested, can carry off such high-sounding programs only because of the superior quality of their students).

While it is true that the primary function of domestic lawyers is to play the traditional role of counselor and advocate, there are a number of facts and conditions whose existence (or likely existence) would seem to justify explicit expansion of law school objectives at all law schools to include the training of policy-makers.<sup>2</sup> At the very top of the list is the explosive character of the interrelated problems of survival, subsistence, population, pollution, economics, ideology, education and health, just to name a few, which confront all societies and all levels of government, from local to supranational, today. Their magnitude and complexity require a heavy and regular flow of decision-makers and advisers competent to participate in the processes of decision in a manner which will move outcomes in directions likely to maximize the values of human dignity, and at a pace fast enough to avert the many disasters, major and minor, which impend. Next is the fact that in the United States the ranks of the law-trained already provide a greater than proportionate share of community policy-makers and other participants in major decision-making processes.<sup>3</sup> Third, there is reason to believe that despite their ubiquitousness, the contributions of the law-trained to *effective* problem-solving in this country has often been minimal, if not retrogressive.<sup>4</sup> And lastly, of the large number of law-trained persons who participate in institutional processes having major effects on community values, a substantial proportion receive their law-training in law schools other than those which purport explicitly to train community leaders.

Placed in this perspective, a preferred general objective of law schools should be to train citizens who are capable of and willing, if not eager, to participate actively in community decision-making processes, and whose contribution to these processes will tend to maximize the society's preferred values, or at least not exacerbate existing problems.

Hopefully, the law-training of community leaders and decision-makers, if that were to become the predominant objective of law schools, would also provide the knowledge and skills required for effective "lawyering"—even more effective, perhaps, than that performed by graduates of schools whose sole objective is to turn out practitioners to serve the needs of the local community.<sup>5</sup> In the first place, most legal educators have long

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2. See generally, Lasswell & McDougal, *Legal Education and Public Policy: Professional Training in the Public Interest*, 52 YALE L.J. 203 (1943). Readers of that article will discover that this paper is a faint echo of the clarion call issued by Professors Lasswell and McDougal over twenty-three years ago. This paper hardly reflects the fullness of their recommendations but nonetheless attempts to move in the direction they suggest.

3. Cf., Hacker, *Domination of Congress by Lawyers*, N.Y. Times, Jan. 5, 1964, § 6 (Magazine), p. 14.

4. *Ibid.* See also Colloquy, *The Public Responsibility of the Academic Law Teacher*, 14 J. LEGAL ED. 109, 115 (1961).

5. Cf., Jones, *Objectives and Insights In University Legal Education*, 11 OHIO ST. L.J. 4, 11 (1950).

recognized the difficulty, if not the impossibility, of training law students in the skills of courtroom advocacy, negotiation and counseling; it is widely believed that most of these skills are acquired more quickly and efficiently after graduation while undergoing the rigors of practice. At least that is the premise upon which the bulk of the curriculum of most law schools is based. Second, many of those law schools which purport to train practitioners place major emphasis on the process of judicial litigation (mostly at the appellate level), leaving their graduates to fend for themselves in the "exotic" fields of administrative law, legislation and private ordering. Any expansion of law school objectives which required greater attention to these areas might well prove a boon to the bewildered graduate entering into practice. Third, the view that law can be taught by the case method alone without reference to the varied features of the fertile context in which decisions are spawned has long ago been debunked by experts,<sup>6</sup> notwithstanding the fact that many casebook editors and a high proportion of law teachers still act as if the parade of appellate opinions could tell the whole story. Even Jerome Frank, who argued persuasively in favor of "lawyer schools," recognized the importance of the related study of disciplines other than "law."<sup>7</sup> Fourth, in order to be effective in performing their respective functions, both lawyers and leaders must understand the various and varied decision-making processes—how they operate as well as what they decide—and the complex of conditions which affect these processes.<sup>8</sup> In short, the law training of policy makers and the training of courtroom lawyers need not be substantially different; the emphasis on broader problems of policy and on relevant information from other disciplines required for the training of leaders might tend to upgrade the training of all.<sup>9</sup>

Perhaps my view can be made more explicit by reference to a specific field, such as the law of torts.

Presumably, the first year torts course, as currently conceived, serves two major functions: development of analytical skills needed by the lawyers—the so-called "legal mind"—and development of understanding of the doctrines and policies of torts and their application within the Anglo-American judicial process. The following generalizations about these two objectives will become relevant to this discussion:

1. The lawyer skills, such as case and statute analysis, induction and deduction, policy analysis, criticism and prediction, are fungible among various fields. Once a law student has developed expertise in such skills he may apply them to fields of law

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6. Cf., CARDOZO, *THE NATURE OF THE JUDICIAL PROCESS* (1921); Pound, *Mechanical Jurisprudence*, 8 COLUM. L. REV. 603 (1908); Holmes, *The Path of the Law*, 10 HARV. L. REV. 457 (1897).

7. Frank, *A Plea for Lawyer-Schools*, 56 YALE L.J. 1303 (1947).

8. Lasswell & McDougal, *supra* note 2 *passim*.

9. *Ibid.*

other than torts. Conversely, if such skills are developed in other courses, they may be applied with equal effectiveness to torts. It seems to follow as well that if a student can be made to develop such skills within a narrow area within a specific field, he should be able to apply them with some success to other areas within the same field. Thus, there appears to be no necessary relationship between the substance of a particular course and training in legal analysis. The reasoning skills of the lawyer could be taught even if torts (or some other substantive courses) were entirely excluded from the curriculum, or if only selected areas within the broader field were included.<sup>10</sup>

2. Few, if any, teachers can cover in depth the substance of all of the various subjects subsumed under the rubric of torts in the amount of time allotted for that course. Whether we address ourselves to the teaching of torts or to the entire curriculum, it must be conceded that vast amounts of relevant substance are never presented to the students. Indeed, it appears to be accepted policy, made explicit by permitting students to elect their own program in the second or third year or by omitting some subjects from the curriculum, *not* to make general coverage of all (or even most) areas of substantive law a prerequisite to graduation or practice. Decisions as to the substantive content and coverage of the curriculum and specific courses within it seem to be made on the basis of custom, existing teaching materials or the personal preference of the instructor and tend to serve rather general objectives, such as providing the student with a traditional background, selecting areas which he is likely to find useful in practice, fulfilling bar exam requirements or merely, as one honest colleague has suggested, analyzing and exploring interesting areas in the law.<sup>11</sup>

If there is validity to these generalizations, then the following recommendations for reordering the torts course (suggestive for other courses as well) designed with the objective of educating better policy-makers, ought not to violate any vital precepts of legal education.

### I. SKILLS

The intellectual tasks performed by the policy-maker do not differ in kind from the tasks performed by the practicing lawyer, but only in emphasis and scope. To borrow from Professors Lasswell and McDougal,

10. This is not to suggest that some areas, such as torts, are not better vehicles for teaching lawyer skills to neophytes than others.

11. *But cf.*, Strong, *A New Curriculum For the College of Law of the Ohio State University*, 11 OHIO ST. L.J. 44, 51-2 (1950). The current trend at the College of Law is away from the thoroughly planned curriculum discussed in the 1950 article; practically all courses in the second and third years are now offered on an elective basis. Similar trends are found in the offerings of other laws schools. See, *e.g.*, THE UNIVERSITY OF MICHIGAN LAW SCHOOL ANNOUNCEMENT: 1966-67 and YALE LAW SCHOOL BULLETIN OF YALE UNIVERSITY, Aug., 1966.

those engaged in decision-making should perform five intellectual tasks if they hope to move the outcomes and effects of decisions in the direction of preferred goals. These tasks include (1) defining of goals in terms of values, (2) determination of relevant decisional trends through time, (3) examination of conditions in the society and human factors which will operate upon and affect decision-making in the future, (4) prediction of future relevant decisions in light of existing trends and applicable conditions and appraisal of those decisions in light of preferred goals and (5) the framing of realistic alternatives of decisions which will tend to create effects consistent with the articulated goals.<sup>12</sup> Without joining issue with the critics of "policy-science" who attack the detailed methodology recommended by Lasswell and McDougal in the performance of the foregoing tasks, or who deride their sometimes complicated terminology developed to avoid traditional ambiguity, it may be safely asserted that any intelligent participant in a decision-making process—whether a lawyer, a judge or a governmental policy-maker—must and will approximate the performance of all five tasks, consciously or unconsciously, systematically or haphazardly, in the performance of his functions.

The major difficulty with the traditional torts course, however, is that the hangover from the days of formalistic jurisprudence still persists. Goal thinking, examination of conditioning factors and the framing of alternatives are apparently deemed largely to be beyond the concern of the lawyer; for all that appears the practitioner need only know how past decisions were arrived at in order to predict future decisions. True, no major casebook on torts is entirely devoid of materials dealing with underlying policies, with the revolution against common law tort immunities, with new ways of handling automobile accident claims or with the process of change as affecting the balance between court and legislature, but few of them include nondecisional materials sufficient to provide a sound basis for intelligent study of goals, conditions and alternatives.<sup>13</sup> What policies should be served by the law of torts? What policies are being served? How effectively are current policies—*e.g.*, deterrence, accident prevention, compensation, loss distribution, social insurance—being served by existing doctrines? What social conditions will affect future decisions? In light of those conditions, how effective can existing institutions be in serving preferred policies? What changes, within and without the scope of existing institutions and doctrine, will advance the goals properly to be served by the law of torts in a free society?

All these questions, it is suggested, are appropriate for consideration not only by community policy-makers, but also by practicing lawyers.

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12. McDougal & Lasswell, *The Identification and Appraisal of Diverse Systems of Public Order*, 53 AM. J. INT'L L. 1 (1959) in McDougal & Associates, *STUDIES IN WORLD PUBLIC ORDER* 3, 16-21 (1960).

13. GREGORY & KALVEN, *CASES AND MATERIALS ON TORTS* (1959) and SHULMAN & JAMES, *CASES AND MATERIALS ON TORTS* (1952) seem to be better than other coursebooks in this regard.

The latter can hardly counsel effectively as professionals or otherwise serve their client's interests unless they are steeped in an understanding of the broader context in which their familiar judicial institution is operating. And even if they could, there is every reason why the range of their interests should be expanded by legal education to include the consideration of and participation in the process upon which the society's future depends—the achievement of social justice within a framework of individual liberties.

Perhaps the kinds of materials and the kind of approach I would like to see adopted will be revealed by examination of one phase of a traditional area of torts study: "proximate cause—persons within the risk." In *The Law of Torts* by Seavey, Keeton and Keeton,<sup>14</sup> the authors treat of this area. Their materials start with the majority and dissenting opinions in the *Palsgraf* case,<sup>15</sup> and are followed by precis and excerpts from 37 additional appellate opinions. Apart from occasional references to law review articles or notes, no other materials appear.<sup>16</sup> This parade of cases sets the stage for the exploration of the various doctrinal approaches to the problem to be examined,<sup>17</sup> the ways in which the doctrines have been applied, the differences among rules applied by different courts, the consistency of their application, the limitations of the doctrines and the exceptions to general rules. Within this rather narrow framework the selected cases work well. A torts teacher can create student interest, if not excitement, by testing the students' intellectual mettle in understanding and analyzing the decisions and the curious concept of proximate cause itself. The difficulty, however, is that every law teacher knows (or ought to know) that "proximate cause" or "scope of duty"—have it either way—are merely doctrinal masks which conceal the difficult underlying issue: Under what circumstances will (or should) the law require defendant to pay for injuries to which his conduct contributed where the risk of injury to the plaintiff from such conduct was more remote than the risk to a third person who was more clearly within the "zone of danger?"<sup>18</sup> The resolution of this issue, notwithstanding the formulae

14. Ch. 3, § 2 (1964).

15. *Palsgraf v. Long Island R.R.*, 248 N.Y. 339, 162 N.E. 99 (1928).

16. Of course these materials must be read in connection with other sections of the book dealing with duty and causation, but even these sections are practically devoid of non-case materials. Chapter 9, containing thirty-six pages devoted to "Stability and Change," are held by the authors to be "relevant to tort law generally," but the bulk of this chapter is also filled with judicial decisions.

17. E.g., is the problem one of "duty" or "proximate cause"?

18. Compare the restatement by Judge Learned Hand of the *Palsgraf* issue in *Sinram v. Pennsylvania R.R.*, 61 F.2d 767 (2d Cir. 1932) in SEAVEY, KEETON & KEETON, *THE LAW OF TORTS* 370, 371 (1964):

[T]he point was whether, if A. omitted to perform a positive duty to B., C., who had been damaged in consequence, might invoke the breach, though otherwise A. owed him no duty; in short, whether A. was chargeable for the results to others of his breach of duty to B.

For my purposes it doesn't much matter whether the issue is narrowly limited, as by Judge Hand, or stated more broadly, as in the text.

offered in the cases, is a problem requiring the decision-maker—judge or jury—to apply notions of justice and policy.<sup>19</sup> The study of the cases in the Seavey casebook will unquestionably provide the student with the doctrinal tools—zone of risk, foreseeability, duty, proximate cause, direct and proximate, probable and natural, etc.—and their procedural consequences. It may even help him to understand how these doctrines have been applied in prior decisions, and how they might be applied in future cases. But it is at its weakest in attempting to direct the students to think about the content and the effects of the underlying policies themselves, and it might even mislead the poor student, or the good student with a poor instructor, to believe that the doctrinal language has fixed content which can decide concrete cases. This is indeed unfortunate. If the only persons affected by the decision of a particular tort case were the immediate parties and if, as between themselves, any non-outlandish decision finally resolving the controversy were acceptable, then perhaps the underlying policy issues could be left entirely to the “practical politics” of the jury or the viscera of the judge. But our elaborate judicial structure would hardly be necessary if that were so; such disputes could be sent in the first instance to a lay panel with instructions to decide on the basis of “fairness.” Rather, it is evident that the law of torts exists to serve specific community objectives and policies. If these are to be served effectively, they are properly subject to scrutiny and analysis by students who will be charged with their implementation in the future. In their study of proximate cause, therefore, the following tasks and materials should become relevant:

I. Goals—In terms of specific values and specific policies, what goals are to be served by the doctrine of proximate cause? Here the materials included for study might range from scientific and philosophical views of causality through theological and ideological positions on the scope of private and public responsibility for the welfare of others. At this point goals which seem to conflict under present or past practices—such as rehabilitation of injured parties versus encouragement to industrial growth—may be identified without resolving the conflict.<sup>20</sup>

II. Trends of Decision—In addition to the leading tort cases, legislation and comparative law and criminal law materials dealing with problems analogous to those subsumed under proximate cause might be included to provide insights as to how the matter is handled in other areas.<sup>21</sup> What factors have influenced

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19. Cf., Green, *The Causal Relation Issue in Negligence Law*, 60 MICH. L. REV. 543 (1962); HARPER & JAMES, *THE LAW OF TORTS* § 20.4 (1956).

20. For a perceptive discussion of goal clarification see MCDUGAL, LASSWELL & VLASIC, *LAW AND PUBLIC ORDER IN SPACE* 141-90, 404-06 (1963). The authors' categorization and definition of the five sanctioning goals of prevention, deterrence, restoration, rehabilitation and reconstruction, *supra* at 404-06, is particularly relevant for the study of the scope of liability.

21. For example, study of workmen's compensation laws is likely to develop insights

the various decision-makers to expand legal responsibility or contract it? Is the value position of the parties a significant factor? Their status as individuals, corporate entities, business enterprises, pressure groups, or governmental agencies? Their motives or objectives? The strategies they employ? The social utility of their conduct?<sup>22</sup>

III. Conditions Affecting Decision—What environmental factors affecting parties, the decision-makers and the decisional process itself are relevant to the resolution of proximate cause questions? Here one might include, for example, data drawn from disciplines such as sociology, psychology, political science, economics and the physical sciences as well as private, industrial and governmental reports, in order to shed light on the factors which might be expected to exert influence on future determinations of the application of proximate cause doctrines.<sup>23</sup>

IV. Prediction and Appraisal—Whither Goeth? In light of past decisions and relevant conditioning factors, what is likely to be the future direction of the doctrine of proximate cause? Is foreseeability and the circle of risk under Cardozo's approach likely to be expanded to create absolute liability? In what areas? What have leading scholars suggested about future applications of the doctrine? Have they taken relevant conditions into account?

Based on these predictions, will the preferred values and policies already outlined be served or disserved by future developments?

V. Alternative Solutions—If it appears that the doctrine of proximate cause is not likely to serve the preferred goals already articulated, what changes in doctrines or institutions might better serve those goals? Here detailed comparison and analysis of existing recommendations should be undertaken. Specific consideration might also be given to the following questions:

#### 1. Who ought to make various decisions about the scope of

into the extent to which the community is willing to deviate from the requirement of close causal relationships between act and harm in order to fulfill other important goals, while examination of the social security laws will reveal that conflicting goals may be resolved by resort to non-judicial machinery wherein causation is deemed irrelevant.

22. In general, what is being called for here is an examination of the relevance to decisions of each element of a community process in which participants with widely differing characteristics, with differing objectives and with varied resources (base values) interact in many situations, and in which such interaction results in various kinds of value deprivations.

23. The most obvious examples of the kinds of non-legal material which may tend to influence decision in the development of legal policy relating to automobile transportation are NADER, *UNSAFE AT ANY SPEED* (1965) and O'CONNELL & MYERS, *SAFETY LAST* (1966).

Perhaps materials from the humanities should be included in this list of conditioning factors. I see (dimly, perhaps), some utility in examining ALBEE's *WHO'S AFRAID OF VIRGINIA WOOLF* as a basis for understanding the factors surrounding scope of liability for interpersonal torts and adultery.



liability—judge, jury, administrative board, legislature or others?

2. What detailed factors ought to be taken into account in making those decisions?

3. If the issues involved in determining scope of liability are to be subject to community judgment, as by a jury, what changes can be suggested in the communications used by the judge to advise the jury of its function?

## II. SCOPE OF THE COURSE

The law of torts, as currently conceived, purports to deal mainly with the process by which a claimant, alleging that he has been wrongfully deprived of a value or values, seeks personal redress against the deprivor. So far as can be ascertained from the content of most of the teaching materials in the field, both the nature of the deprived value and the characteristics of the parties—person, group or government—are irrelevant in determining the scope of the course. Thus, for example, the typical torts casebook treats, *inter alia*, of injuries to or interferences with real and personal property, the human body, the mind, the reputation, and relationships of all kinds.

Unfortunately, however, certain kinds of value deprivations, those of major concern to contemporary society, are not treated at all in this course, or are relegated to a few pages hidden in the back of the casebook. I refer to claims by those who are deprived of access to various value processes, as well as to the values themselves, by virtue of poverty or race. How frustrating it must seem to some first-year law students, only recently rescended from the height of their involvement in the major problems of their society and now turning hopefully to the study of law as the instrument of social change and improvement, to find themselves thrown out of the battlefield and into the no-man's-land of proximate cause, or the difference between trespass and case, or between legal intent and motivation, without even a glimmer of hope from the table of contents of their casebook or the college catalogue that they will deal directly with wrongs caused by the societal "torts" of cultural deprivation and racial prejudice.

I do not suggest eliminating either traditional grounds of tort liability or the study of history from consideration by students. Rather, I recommend that much of what is studied now under the rubric of torts might be deemphasized, perhaps replaced in part by textual materials, and that the course should be expanded to include exposure to remedies for cultural deprivations (social legislation), violations of civil rights, and for workmen's injuries.<sup>24</sup>

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24. I am willing to concede that more hours might have to be added to the course in

## III. ARENAS

It may well be the case, of course, that the traditional limitation of the scope of the course in torts was based on the fact that it only purported to deal with matters within the scope of the process of judicial litigation. In view of the volume of value-effecting decisions which take place in other non-judicial arenas—decisions in which attorneys frequently participate—such limitation is hardly understandable today. In the first place, the vast bulk of traditional tort claims are today settled by negotiation. While such negotiation is carried on with reference to predictions of probable judicial outcomes, the process of negotiation is distinctively different from the process of litigation and involves its own techniques, skills and knowledge. All of these are worthy of the law student's attention. But further, the dynamics of settlement has a major impact upon the ethics of the entire society, and the economics of settlement is inextricably bound up with the effectiveness of legal doctrine and policy articulated by the legislature and the courts. Should not the student be exposed to these relationships and their effects upon the society's values before he is released to develop a vested interest in the status quo? Should he not be asked to examine whether and to what extent the doctrines and institutions he is studying are operating to maximize the society's values, and to think constructively about improving their operation? Or is the curriculum to lend itself to the training of practitioners who will accept the existing doctrines and institutions as given, however unfairly and unevenly they operate?

Secondly, a very high proportion of the claims which at common law would have been presented in a judicial tribunal, or not at all, are today brought before administrative bodies. This is true not only of workmen's compensation, but also of other important claims, such as discrimination and dependency, as well. There does not seem to be any valid reason for failing, in a course purporting to deal with legal remedies for value deprivations, to expose law students to the techniques and doctrines applied by these tribunals. To exclude consideration of administrative remedies from the "torts" course, or even to postpone consideration thereof until an elective course in a later year, is to mislead the student and give him a distorted view of the manner in which his society deals with such deprivations.

Thirdly, along with administrative agencies the use of arbitration to decide disputes over damage claims accounts for a share of the "litigation" involving such disputes. The role of arbitration, the rules of decision applied in arbitral proceedings, and the effectiveness of such tribunals

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order to avoid superficial treatment of the selected subjects. However, I understand that many teachers are now managing—although not without difficulty—to handle the criminal law course as expanded by Donnelly and Goldstein within the time limit allowed for the more traditional course.

in fulfilling the policies of tort law, are all matters with which the legal profession should be concerned, and which should be introduced to the law student in any course purporting to deal with the process of adjusting claims for value deprivations.

Fourthly, the course in torts should take into account the fact that the lawyer's function, either as advocate of a paid client or representative of a community interest, may and sometimes should extend into the legislative arena.<sup>25</sup> Various widespread value deprivations or social injustices will yield more quickly and effectively to improvement in the legislative arena than in the judicial. While one may appreciate the importance of judicial legislation as a means of overturning archaic and unjust concepts of tort law, and even agree that the courts have the power to make such changes, it must nonetheless be conceded that the rapid rate of change experienced in the past couple of decades threatens the integrity of appellate decision-making and the respect of the public for appellate courts. Courts perform most effectively when applying well-formulated policies and prescriptions to specific factual situations; there is much creativity required to perform even this task. Legislatures, on the other hand, are better equipped to frame policy and to work out details of specific policies by establishing standards, procedures and special treatment for exceptional cases. Yet the neophyte lawyer, in his very first exposure to authoritative decision-making (and perhaps throughout his law school career), is involved almost exclusively with the courts as organs of reform and to the legislative process hardly at all. Perhaps, therefore, the course in torts ought to include detailed study of successful attempts to secure reformative legislation (such as FELA, a selected workmen's compensation act, or a comparative negligence statute) including the elements of the legislative process in which lawyers played a significant role.

Lastly, a useful purpose would undoubtedly be served by exposing first year students, at the outset, to the methods of handling claims relating to value deprivations and the relevant doctrine in other countries. In the search for solutions to problems created by traditional common law methods of handling tort claims, awareness and knowledge of other systems and of the advantages and disadvantages of such systems ought not to be ignored. Supporters of the law of torts as applied domestically are hard-pressed at the moment to withstand the demands for reform which are being urged at a burgeoning rate. If judicial institutions are to adjust to the needs of the society for fair and prompt redress for value deprivations, the experience of institutions with similar purposes in other societies should provide helpful ideas and useful alternatives. Furthermore, in an age of rapid communications and increasing movement across

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25. Cf., Jones, *Objectives and Insights in University Legal Education*, 11 OHIO ST. L.J. 4, 8-12 (1950).

national boundaries, in depth treatment of foreign legal institutions which purport to deal with problems similar to those on the domestic scene may evoke understanding and respect for those institutions, and tend to break down barriers of parochialism. This would not be the least important contribution which legal education could make.

#### CONCLUSION

It is within the bounds of reason to assert that students arrive at law schools with pre-cast personalities, perspectives and interests molded and set by heredity, environmental conditioning and prior experience and resistant to change by exposure to the influence of a few law teachers. Even under this pessimistic view, however, the law school may still serve the function of developing intellectual skills and understanding of the processes of community decision-making sufficient to permit the graduate lawyer to perform important tasks for his clients and his society, even within the limits of his own predispositions. Unfortunately, it is apparent that too many law schools have failed rather miserably much of the time even in performing those modest tasks. Every law teacher knows that the law, as invoked, applied and even prescribed by lawyers, has fallen far short of achieving even the minimal objective of maintaining order. But furthermore, in the day-to-day operation of the law of negligence we are aware of the widespread operation of the "false claim game" and its baleful effects on the ethics of the general population, of routine conspiracy between lawyer and physician, of the arbitrary effects of contributory negligence and unwarranted exceptions to the requirement that each person exercise reasonable care for the safety of others, of excessive fees, of justice delayed by harassment and dilatory tactics and, especially, of the failure to provide any compensation at all to meet the crushing effects of hundreds of thousands of actuarially predictable misfortunes which arise inevitably in the operation of an otherwise beneficent industrial society. As to the uncharted wastelands of poverty, prejudice and crime, we have been aware for years of failures to provide access for the value-deprived to arenas and strategies by which claims to minimal standards of dignity and fairness can be aired. And even now, having seen dramatic legislative and judicial inroads into the problems of cultural deprivation, we entertain serious doubt as to the ability of our profession to fulfill the demand for effective representation in support of the newly recognized claims. In the administration of our courts and administrative agencies we are aware of the high incidence of incompetence and venality in our decision-makers and the debilitating effects thereof in terms of delay, injustice and indignity. And most importantly, we are fully aware of the continuing failure of law and legal institutions to cope with the insistent demands for social justice and control of force in the international arena.

The fact that these failures, and others like them, cannot be ascribed

solely to deficiencies in the law-trained, does not detract in the least from the fact that they are in a better position than most other groups in the society to develop and implement effective remedies. What has been recommended in this report is a reexamination and restructuring of course material to induce the law teacher to take his students far beyond the traditional experience of "learning" the content of existing doctrine and the ways in which it has been applied, into the kinds of intellectually stimulating inquiries, oriented to the policies and effects of the law, which could conceivably bring the lawyer and his profession into battlefields where justice can be fought for and won on a grand scale.